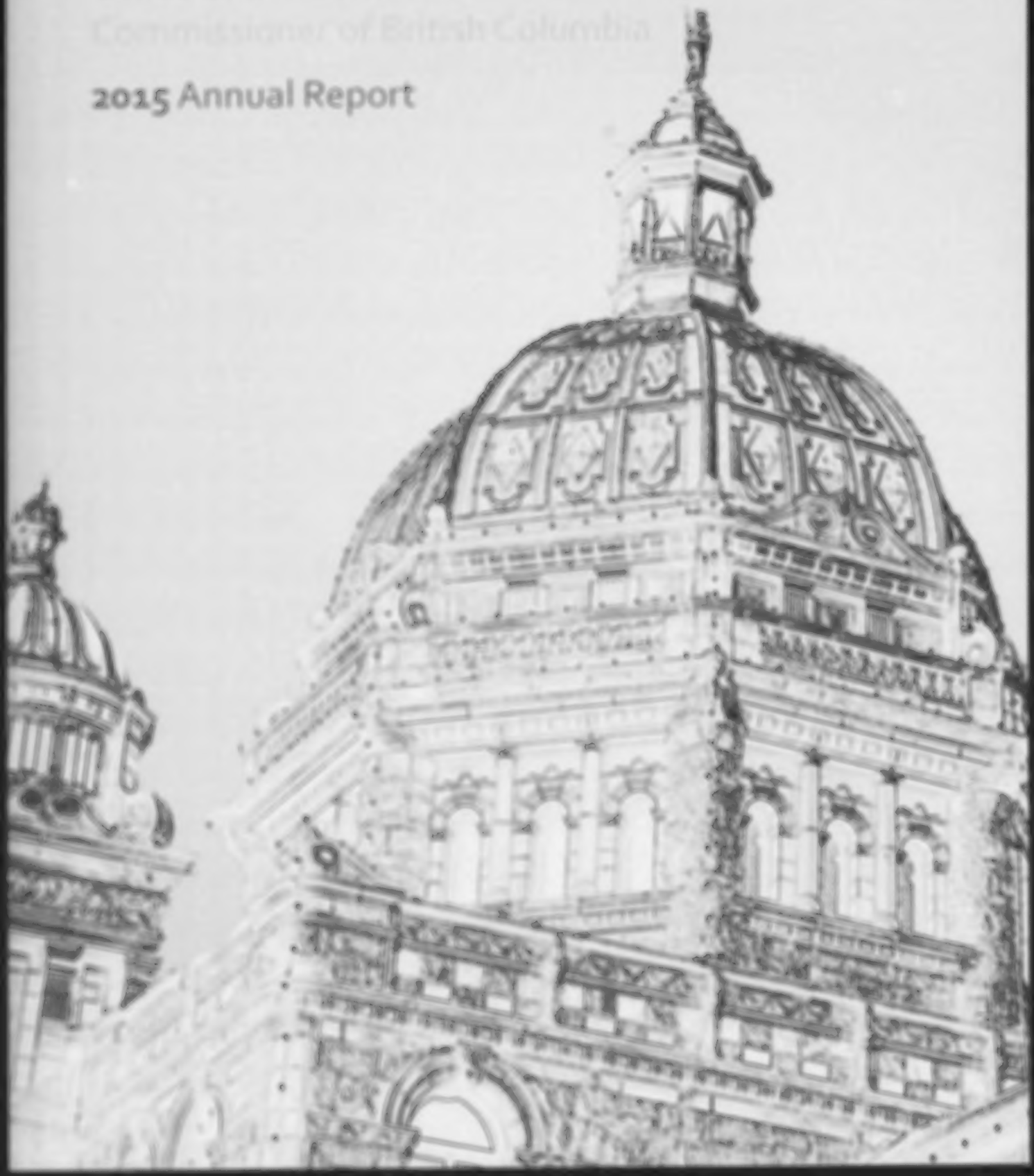
Office of the Conflict of Interest Commissioner of British Columbia

2015 Annual Report



BRITISH COLUMBIA

Office of the
Conflict of Interest
Commissioner

Paul D.K. Fraser, Q.C.

Annual Report 2015

Office of the Conflict of Interest Commissioner

Paul D.K. Fraser, Q.C.
Commissioner

Mailing Address:
First Floor - 421 Menzies Street
Victoria, BC V8V 1X4

Telephone: 250 356-0750
Facsimile: 250 356-6580
conflictofinterest@coibc.ca
www.coibc.ca

BRITISH
COLUMBIA

June 6, 2016

The Honourable Linda Reid, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Madame Speaker,

It is an honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2015.

This Report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Sincerely,

Paul D.K. Fraser, Q.C.
Commissioner

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COMMISSIONER'S MESSAGE

Paul D.K. Fraser, Q.C.

IT WAS IN December of 1990, that the *Members' Conflict of Interest Act* became part of the law in British Columbia. It happened because of the foresight and public policy ingenuity of the Honourable Ted Hughes, Q.C. and as a result of the Legislature's determination to establish an Office to foster integrity in the performance of their public duties by elected Members as well as to promote public trust and confidence in that service, by providing access to it by the public.

In the work we have done for the last 25 years, the fundamental presumption has not been that corruption and evil exists and may go undetected – but rather that those who seek and attain high office do so for right and honourable reasons and should have access to obtaining advice to protect against their private interests conflicting with their public responsibility. In short, the mandatory and transparent disclosure process in our *Act* is both in the public interest and a benefit to elected officials.

Transparency laws are amongst the tools of modern government. The establishment in 1995 of an independent commission was a sensible mechanism to provide MLAs with independent and confidential advice about the principles that inform the conflict of interest rules and how to comply with them.

We celebrate the hundreds of MLAs who, over the last 25 years and to this day have lived by and respected the rules, in the public interest. It is that record of compliance and cooperation by people of conscience, dedication, and integrity that has enhanced the reputation and utility of this Office.

The purpose of this annual report is to inform the legislature – to whom we are accountable – and to all British Columbians on the activities and aspirations of our Office. My thanks to the Members for their continued cooperation in ensuring that transparency will continue to inform our democracy.

Members of the Legislative Assembly are expected to act in the public interest at all times, and must not use their official position for personal gain or advantage.

HOLDING ELECTED OFFICE is a public trust. The rules governing conflict of interest for Members are set out in the Act and ensure that those who are elected to public office are held to high standards of conduct.

A conflict of interest arises when a Member's duty to act in the public interest is or may be affected by his or her private interest. In most cases "private interest" will be pecuniary in nature. However, a private interest can also be non-pecuniary, providing it confers a real and tangible benefit on the Member.

Members must avoid both actual and apparent conflicts of interest, and must arrange their private affairs to prevent such conflicts from arising.

Members are required to resolve any conflicts which do arise promptly and transparently.

In addition to the general prohibition against actual or apparent conflicts of interest, other prohibitions include:

Insider information

A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Section 4

Influence

A member must not use his or her office to influence a decision, to be made by another person, to further the member's private interest.

Section 5

Extra benefits

A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

Section 7

The Conflict of Interest Commissioner is an independent, non-partisan Officer of the Legislative Assembly who is responsible for impartially administering the *Members' Conflict of Interest Act*.

In British Columbia, as in most parliamentary democracies, there are several Statutory Officers of the Legislature (such as the Auditor-General) whose work is essential to ensure accountability and promote good governance. However, the Conflict of Interest Commissioner is the only Officer of the Legislative Assembly.

The Conflict of Interest Commissioner is dedicated exclusively to the service of the Legislative Assembly itself in respect of Members' conduct expectations and discipline.

As a result, the records contained in our Office remain confidential as part of the legislative privilege which we enjoy as a matter of law.

The Commissioner has three primary roles:

PROVIDE ADVICE AND OPINIONS	OVERSEE DISCLOSURE PROCESS	RESPOND TO ALLEGATIONS
Provide confidential advice to Members about their obligations under the Act	Meet with each Member at least annually to review the disclosure of the Member's financial interests	Respond to allegations that the Act has been contravened, and conduct an inquiry if warranted

The focus of the Commissioner's work is to help Members understand their obligations under the Act and provide guidance to prevent conflicts of interest from arising or persisting.

A [redacted] the Commissioner's most important function is the [redacted].

Under section 28 of the Act, Members may request that the Commissioner provide a formal written opinion on a conflict of interest matter, and are encouraged to do so if in any doubt about their obligations under the Act. The advice remains confidential unless the Member decides to release it. The Commissioner is also available to provide confidential oral advice to Members.

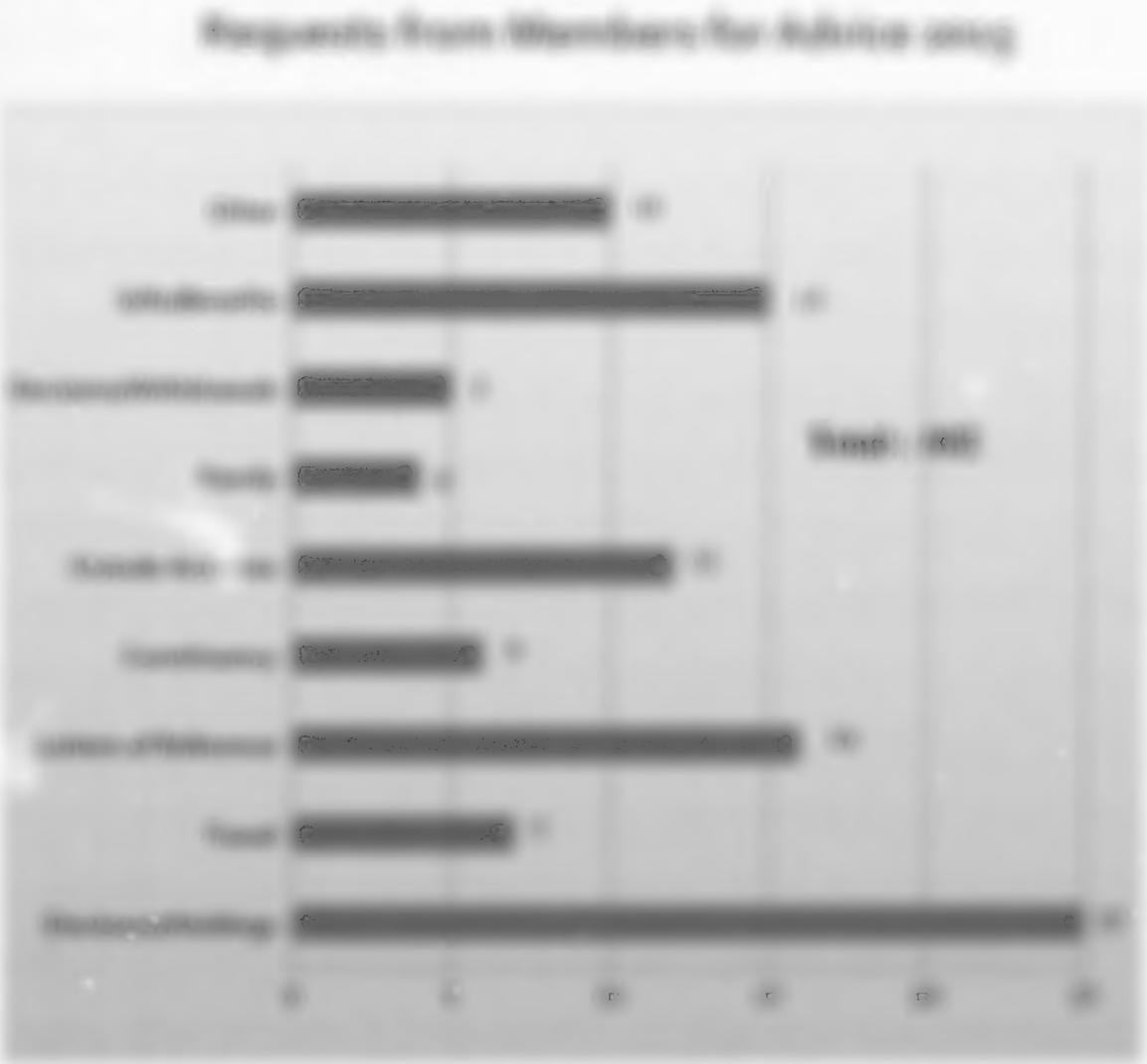
If the Commissioner determines that a Member has or may have a conflict of interest, he can make recommendations and specify a timeframe for compliance.

Our Office receives a great variety of requests for advice from Members and their staff. Some requests are informal and do not proceed beyond the initial phone call or email to the Commissioner. Others are more substantial and may involve multiple communications back and forth with the Member, require background research, and result in a written response.

In addition to responding to requests for advice in relation to specific matters, we frequently provide general information to Members about their obligations and provide assistance with disclosure, reporting and procedural matters.

The Commissioner also engages in numerous outreach interactions and exchanges with Members throughout the year. From time to time, prospective candidates for provincial office seek information about their obligations should they be elected.

A breakdown by topic of the requests for advice received in 2023 is shown below:



Time to respond to Requests from Members for Advice

Median	Average
1 business day	2 business days

[redacted]

[redacted]

[redacted]

[

Throughout the year, Members must report "material changes" and receipt of certain gifts and personal benefits.

MATERIAL CHANGES

After Members have filed their annual confidential disclosure statements, they have an ongoing obligation to report any material changes to their financial interests within **30 days** of the change occurring.

After reviewing the Member's material change form, our Office prepares a Notice of Material Change which is then filed with the Clerk of the Legislative Assembly, where it is filed with the Member's most recent PDS. A copy of the Notice is also sent to the Member.

A "material change" is defined as an acquisition or disposition, whether in whole or in part, occurring after the Member has filed a disclosure statement, of any asset, liability, financial interest or source of income by the Member, his or her spouse or minor children, or a private corporation controlled by any of them, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.

GIFTS AND PERSONAL BENEFITS

Members are prohibited from accepting gifts or personal benefits in connection with the performance of their official duties. However, there is an exception for gifts or personal benefits received "as an incident of protocol or social obligations". In most cases this means a token expression of appreciation or complimentary hospitality in the context of some official interaction.

Before accepting a gift, Members must consider whether accepting the gift would - or would appear to - place the Member under an obligation to the donor.

Members are required to disclose and provide details of any gift or personal benefits they have received if the value of the gift exceeds $250, or if the combined value of multiple gifts from the same donor exceeds $250 in a twelve month period. A summary of gifts received is included in the Member's PDS.

ALLEGATIONS CONCERNING MEMBERS

The Commissioner may conduct an Inquiry into allegations that a Member has breached the *Act*.

The Members' Conflict of Interest Act concerns itself with the specialized issue of real and apparent conflict of interest. The policy of the *Act* is to ensure that Members do not advance (or are not perceived to advance) their private interest or use their office for their own private gain.

Under section 19 of the *Act*, the Commissioner may provide an opinion about a Member's compliance with the *Act* or section 25 of the *Constitution Act* in response to a request from a member of the public, a Member of the Legislative Assembly or Executive Council, or the Legislative Assembly.

"...decisions made by the Commissioner in the carrying out of the Commissioner's powers under the Act are decisions made within, and with respect to, the privileges of the Legislative Assembly and are not reviewable in the courts."
Tafler, 1998 (BCCA)

Typically, when concerns about a Member's compliance are brought to his attention, the Commissioner first gathers information informally to determine if there are reasonable and probable grounds to support the allegations. The Commissioner then determines whether to proceed to the formal Inquiry stage or dismiss the allegations as unwarranted.

If a Member is found in contravention of the *Act*, the Commissioner may recommend a penalty, which may include a reprimand, suspension, fine of up to $5,000 or a declaration that the Member's seat be declared vacant until an election is held in the Member's electoral district. While the Commissioner may recommend penalties against a Member, it is up to the Legislative Assembly to accept or reject the recommendation.

Formal Requests for Opinions (section 19)

From MLAs	0
From public (jurisdictional)	1
From public (non-jurisdictional)	4
TOTAL	5

Formal opinions issued under sections 18 and 19 of the *Act.*

OPINION CONCERNING WILLILAM BENNETT, MLA AND MINISTER

QUESTIONS WERE RAISED in the media and by the Official Opposition in the Legislative Assembly that the Honourable Bill Bennett, Minister of Energy and Mines and Minister Responsible for Core Review, may have been involved in a decision affecting the allocation of wildlife between resident and non-resident hunters. Concerns arose that the Minister may have been in a conflict of interest for doing so by virtue of having a financial interest in a business related to guide outfitting.

As a result of these concerns being raised publicly, Minister Bennett asked the Commissioner for his Opinion on the matter.

Section 18

"A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the Constitution Act."

The Commissioner found that the Minister was not in fact involved in a material way in the allocation decision, nor was there evidence that he promoted the interests of guide outfitters. Moreover, the Minister no longer had a private interest in the guide outfitting business in question.

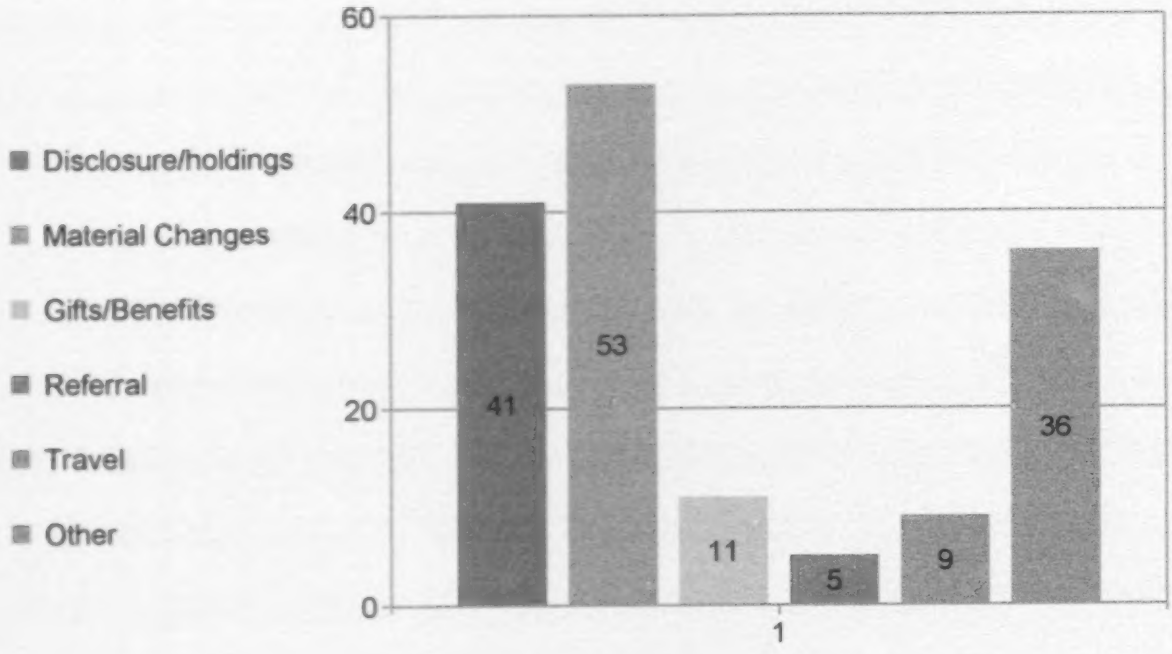
The Commissioner concluded that Minister Bennett had not acted inappropriately and was not precluded from participating in discussions relating to wildlife allocation issues in the future.

Opinions provided to Members are confidential unless the Member chooses to waive that confidentiality, as Minister Bennett did in this case. The Commissioner's full Opinion is available on our website at http://www.coibc.ca/down/opinion/opinion_bennett_2015.pdf

The Commissioner and staff engage in a variety of communications, outreach and other activities throughout the year.

THROUGHOUT THE YEAR, our Office responds to many requests for general information from Members, their staff, the media and the general public. When we receive requests that relate to matters beyond the Commissioner's jurisdiction, we do our best to refer individuals to the appropriate agency.

Requests for Information: Members



Requests for Information: Overall

MLAs	General Public	Media
155	40	6
	Total:	**201**

In most cases we are able to respond to requests for information on the same day.

CCOIN

OUR OFFICE IS an active member in the Canadian Conflict of Interest Network (CCOIN), an organization that brings together Commissioners and professional colleagues from all the parliamentary and legislative jurisdictions in Canada. CCOIN members meet annually to exchange information and learn about best practices and developments in their respective jurisdictions.

In 2015, the annual CCOIN Conference was held in Quebec City from September 2-4. Delegates from across the country discussed important investigation reports and legislative updates from around the country. Presenters included Professor Eric Montigny,Chair of Research on Democracy and Parliamentary Institutions at Laval University, and a delegation from France who presented on ethics and conduct challenges.

The 2016 Conference will be held in Edmonton, Alberta.

PRESENTATIONS

EACH YEAR THE Commissioner meets with Legislative Interns who have been selected for the BC Legislative Internship Program. The Program has been sponsored for more than 35 years by the Legislative Assembly and the exchange is a valuable experience for both the Commissioner and the Interns.

The Commissioner also presented to university students in the Political Science program at Simon Fraser University.

In April 2015, the Commissioner was invited to make a submission and appear before the Select Committee on Procedure and House Affairs in Ottawa for his views on proposed amendments to the federal *Code of Conduct for Members of the House of Commons.* The Commissioner commented on key difference between our legislation in British Columbia and the federal code.

AMENDMENTS TO THE ACT

AS NOTED IN previous annual reports, amendments to the *Act* are long overdue. The Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills (the "Committee") reviewed the *Act* in 2012 and issued its report in 2013.

The Committee made a total of 34 recommendations to amend the *Act*. No legislative action took place in 2015, but we hope and expect that the legislative process will move forward in 2016.

25TH ANNIVERSARY CELEBRATION

WE ARE LOOKING forward to celebrating the 25th anniversary of the passage of the *Act* and the founding of the Office. An event will be held at Government House to mark this important milestone. Many friends and distinguished guests are expected to attend.

BULLETINS

From time to time, the Commissioner issues interpretive memos and other publications which provide guidance on specific conflict of interest issues. A list of all bulletins issued by the Office is available on our website at:
http://www.coibc.ca/down/bulletins/sponsored_travel_bulletin.pdf

More and more, Members are facing novel issues arising from the greater use of social media over other more traditional forms of communication.

To assist Members navigate some of these issues, in 2016 my Office intends to prepare guidelines for appropriate use of social media by Members.

BUDGET SUMMARY

For fiscal year 2015/16, we received a budget appropriation of $567,000. The actual cost of our operations for the year was $639,000. The cost over-run was due to the Commissioner's position increasing from 75% to 100% as of April 30, 2015.

Our Budget Proposal for 2016/2017 - 2018/19, presented to the Select Standing Committee on Finance and Government Services (the "Committee") on November 4, 2015, sought an annual budget of $701,000. The Committee approved the annual budget and the provision of an annual capital allowance of $25,000.

TRAVEL EXPENSES

The Commissioner's travel expenses are now posted on our website and updated on a quarterly basis, available at http://www.coibc.ca/admin.htm

ACCOUNTABILITY

The Office is accountable for its operations through the issuance of the annual report and the annual budget presentation to the Committee.

In his presentation before the Committee in 2014, the Commissioner suggested the establishment of a new standing committee empowered to meet with statutory officers at other times throughout the year.

The Committee agreed that it should have a more frequent and regular reporting relationship with all of the statutory offices, as additional meetings held at other times of the year would provide a forum for broader discussion of annual reports and service plans separate from the budget review process.

In 2015, the Commissioner met with the Committee twice, in the spring and the fall.

We look forward to our continuing work in the service of the public and the Legislative Assembly of British Columbia.

ACKNOWLEDGEMENTS

TECHNICAL SUPPORT TO our Office is provided by the Legislative Assembly Information Technology Branch (LAITB). Many thanks to the LAITB staff for their expert advice and assistance with our day to day technology needs, as well as support for our ongoing projects. We are also grateful to the Ministry of Finance (Corporate Financial Services and Facilities Branch) which provides financial services assistance, and to the Speaker and the Clerk of the House and their respective Offices, as well as the Caucus Chairs and their assistants.

OFFICE COLLEAGUES

Linda Pink, *Executive Coordinator*

Ms. Pink has been the operational manager of the Office since November 2012. Her experience in senior administrative positions within the public service informs her work and benefits the Office. She is well known and highly regarded within the Legislative precinct as a wise and helpful colleague possessed of both common sense and a friendly manner. We are fortunate to have Ms. Pink as our administrative leader.

Alyne Mochan, *Legal Officer*

Ms. Mochan has been our talented and diligent Legal Officer since 2011. She is an important member of our team, as well as a valuable resource for the work of CCOIN - where she has earned the respect and gratitude of our colleagues around the country.

Amber Derricourt, *Executive Administrative Assistant*

Ms. Derricourt's primary responsibility has been working with the Members in the annual disclosure process and throughout the year. Her experience and gentle nature has continued to make her a valuable and appreciated colleague.

Caitlin Ross, *Receptionist*

Ms. Ross has become the very capable voice and public face of the Office dealing with enquiries about our work from the public and interacting with MLAs. She has also provided valuable research assistance on a number of files.

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